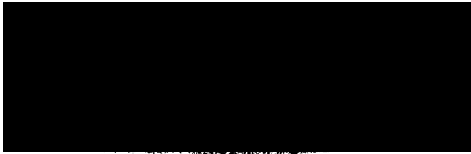




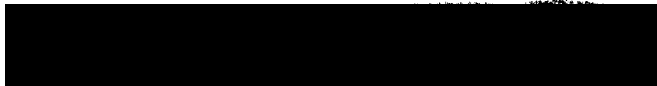
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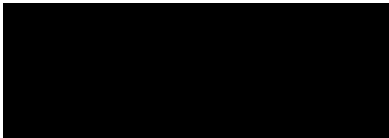
FILE: WAC 99 110 50512 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



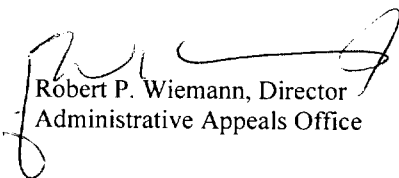
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). After the petitioner filed a motion to reopen or reconsider, the AAO affirmed its previous decision. The matter is now before the AAO on a second motion to reopen. The motion will be rejected as untimely filed.

In the instant matter, the petitioner claims to be a talent agency for movie and television actors and models. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president. The director denied the petition after determining that the petitioner had failed to establish that the foreign entity was doing business or that the beneficiary would be employed primarily in a managerial or executive capacity. The AAO upheld the director's decision on appeal and on motion.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The last decision of the AAO was issued on November 7, 2001. The motion was filed on August 23, 2002, more than nine months after the AAO decision was issued. Accordingly, the petitioner's motion was filed 256 days late.

On motion, counsel has requested that the failure to file the motion within the 30-day time period be excused. Counsel asserts that the petitioner sought new counsel after receiving the AAO decision dated November 7, 2001. Counsel further asserts that the events of September 11, 2001, delays in obtaining the petitioner's files from previous counsel, and delays in obtaining documents from the foreign entity all resulted in the late filing of the current motion on August 22, 2002.

Upon review, the petitioner has failed to show good cause for the delay in submitting the instant motion and the attached exhibits. While the petitioner may have retained new counsel, the petitioner has not alleged that the previous counsel's representation was flawed or ineffective on appeal or with regard to the petitioner's first motion. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). A decision to change legal representation on motion is an individual choice and will not be accepted as an excuse to substantiate a good cause claim, especially where the delay in filing approaches nine months. In the instant matter, the delay is unjustified, excessive, unreasonable, and significantly outside of the time period allowed by regulation.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, taking into

consideration that this is the petitioner's second motion the AAO's decision, the petitioner has not met that burden.

As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected as untimely filed.